SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ACE SECURITIES CORP., HOME EQUITY LOAN TRUST, SERIES 2006-SL2, by HSBC BANK USA, NATIONAL ASSOCIATION, solely in its capacity as Trustee pursuant to a Pooling and Servicing Agreement, dated as of March 1, 2006,

Plaintiff,

-against-

DB STRUCTURED PRODUCTS, INC.,

Defendant.

Index No. _____

Date Purchased: June 18, 2014

SUMMONS

Plaintiff designates New York County as the place of trial.

The basis of venue is CPLR 503

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer upon the undersigned attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the state of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the notice set forth below.

Dated: New York, New York
June 18, 2014

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: s/ Christopher P. Johnson

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COMPLAINT

Plaintiff ACE Securities Corp., Home Equity Loan Trust, Series 2006-SL2 (the "Trust"), by HSBC Bank USA, National Association ("HSBC" or the "Trustee"), solely in its capacity as the Trustee for the holders of Asset Backed Pass-Through Certificates, Series 2006-SL2 (the "Certificates"), issued by the Trust pursuant to a Pooling and Servicing Agreement, dated as of March 1, 2006, as and for its complaint against defendant DB Structured Products, Inc. ("DBSP"), states and alleges as follows:

REVIVAL PURSUANT TO CPLR 205(a)

1. Pursuant to CPLR 205(a), the Trustee brings this action, on behalf of the Trust, to revive a prior action, *ACE Sec. Corp. v. DB Structured Prods., Inc.*, Index No. 650980/12 (Sup. Ct. N.Y. Cnty.) (Kornreich, J.) (the "Prior Action"), that had been commenced on behalf of the Trust by certain Certificate holders ("Certificateholders"). In accordance with CPLR 205(a), i) the Prior Action was timely commenced by the Certificateholders; ii) the Prior Action was terminated in a manner other than "a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute, or a final

judgment upon the merits"; iii) this action is based "upon the same transaction or occurrence or series of transactions or occurrences" as the Prior Action; and iv) this action is being commenced and service is being effected within six months of the December 19, 2013 dismissal of the Prior Action.

2. Specifically, on March 28, 2012, the Certificateholders commenced the Prior Action by filing a summons with notice seeking relief, solely on behalf of the Trust, for DBSP's failure to comply with its contractual obligation to repurchase the Mortgage Loans. On August 24, 2012, DBSP appeared and made a demand for a complaint. On September 13, 2012, the Trustee, again solely on behalf of the Trust, then served and filed the complaint in that action. Although the IAS Court denied DBSP's motion to dismiss the complaint, the Supreme Court of New York, Appellate Division, First Department (the "First Department"), reversed and dismissed the Prior Action on December 19, 2013.

3. In dismissing the Prior Action, the First Department held that, by the March 28, 2012 date on which the Certificateholders had commenced the Prior Action, "the 60- and 90-day cure and repurchase periods had not yet elapsed," such that the Certificateholders had failed to comply with a condition precedent to commencing suit. As those cure and repurchase periods have now elapsed, that condition precedent has been satisfied.

4. In dismissing the Prior Action, the First Department also held that the Certificateholders had lacked standing to commence the Prior Action on behalf of the Trust and that, as a result, the Trustee's September 13, 2012, complaint in the Prior Action did not "relate back" to the Certificateholders' March 28, 2012 summons with notice. As the Trustee has standing to commence this action, that aspect of the First Department's dismissal has likewise been cured.

5. Accordingly, as set forth below, because DBSP has failed to cure or repurchase a single Defective Loan, the Trustee hereby seeks to enforce DBSP's repurchase obligation on behalf of the Trust.

NATURE OF ACTION

6. This is a breach of contract action arising out of DBSP's failure to repurchase loans from a pool of 8,815 home mortgage loans (the "Mortgage Loans") securitized in the Trust.

7. Non-parties Long Beach Mortgage Company ("Long Beach"), Fremont Investment and Loan ("Fremont"), and other originators (collectively, the "Originators") originated 62 percent, 30 percent and 8 percent of the Mortgage Loans, respectively. DBSP purchased the Mortgage Loans from the Originators.

8. DBSP then sold the Mortgage Loans to ACE Securities Corp. ("ACE"), like DBSP, a wholly-owned subsidiary of Deutsche Bank AG ("Deutsche Bank"), pursuant to the Mortgage Loan Purchase Agreement, dated March 28, 2006 (the "Purchase Agreement").

9. ACE then deposited the Mortgage Loans into the Trust, and the Mortgage Loans were securitized through the issuance of over $500 million of Certificates (the "Securitization") pursuant to a Pooling and Servicing Agreement, dated as of March 1, 2006 (the "PSA"). (A true and correct copy of the PSA, which includes the Purchase Agreement as Exhibit F thereto, is attached hereto as Exhibit A.) Certificates issued pursuant to the Securitization and others like it are known as "Residential Mortgage Backed Securities" or "RMBS."

10. In connection with the sale of the Mortgage Loans to the Trust, DBSP made over fifty representations and warranties (the "Representations and Warranties") regarding the characteristics and quality of each Mortgage Loan, including, among many others, that the

Mortgage Loans complied with specified underwriting guidelines (*see* Exhibit A, Purchase Agreement § 6(xxiii)) and legal requirements (*see id.*, §§ 6(viii), (x), (xl)), and that no misrepresentation or fraud had taken place with respect to each Mortgage Loan on the part of DBSP, the Originators, the borrower or, to DBSP's knowledge, any other party involved in the origination of the Mortgage Loan (*see id.*, § 6(ii)).

11. These and other Representations and Warranties were meant to ensure that the Mortgage Loans met an agreed-upon level of creditworthiness and that the information provided by DBSP and the Originators regarding those Mortgage Loans was true and accurate for the purposes of, among other things, the assignment of correct credit ratings to the Certificates by rating agencies. (*See id.*, § 6(i)) The Representations and Warranties were also intended to provide the Certificateholders with comfort that the Trust held Mortgage Loans that met certain essential characteristics, which served as indicators of the quality and value of each Mortgage Loan and, ultimately, the price at which the Trust purchased the Mortgage Loans from DBSP.

12. With this understanding, DBSP agreed in the Purchase Agreement that if any Mortgage Loan was found to be in breach of the Representations and Warranties and such breach materially and adversely affected the value of that Mortgage Loan or the interest therein of the Certificateholders (each such Mortgage Loan, a "Defective Loan"), DBSP would cure such breach in all material respects within 60 days of DBSP's discovery of, or receipt of notice of, such breach, or, in the event DBSP could not cure such breach, DBSP must repurchase the Defective Loan within 90 days of its discovery of, or receipt of notice of, such breach (the "Cure Period"). (*See* Exhibit A, Purchase Agreement § 7(a); PSA § 2.03(a))

13. A loan-level investigation performed by an independent forensic mortgage loan review firm (the "Forensic Review Firm") has, thus far, revealed breaches of the Representations

and Warranties with respect to 696 Mortgage Loans in the Trust out of the 697 Mortgage Loan files that were analyzed. Furthermore, an analysis of publicly-available data regarding the Mortgage Loans in the Trust uncovered breaches of the Representations and Warranties with respect to 946 Mortgage Loans.

14. Upon learning the results of the Forensic Review Firm's investigation, the Trustee promptly notified DBSP of the breaches of the Representations and Warranties with respect to the Defective Loans, and requested that DBSP cure such breaches or repurchase the identified Defective Loans within the Cure Period.

15. DBSP refused to recognize the Trustee's notices as valid and did not cure the identified breaches or repurchase any Defective Loans. To date, DBSP has failed to cure a single breach or repurchase a single Defective Loan in response to the Trustee's notices.

16. The Trust has suffered over $330 million of losses on non-performing Mortgage Loans to date, and will continue to suffer damages as a result of DBSP's failure and refusal to comply with its express contractual obligations. Accordingly, the Trustee, on behalf of the Trust, is entitled to specific performance of DBSP's repurchase obligations under the Purchase Agreement and the PSA, and to reimbursement for all reasonable expenses related to the enforcement of DBSP's repurchase obligation.

PARTIES

17. Plaintiff HSBC is a national banking association whose registered main office is in McLean, Virginia, and whose principal executive office is in New York, New York.

18. Defendant DBSP is, upon information and belief, a corporation, organized under the laws of the State of Delaware, with its principal place of business in New York, New York.

JURISDICTION AND VENUE

19. This Court has jurisdiction over this proceeding and the parties pursuant to CPLR §§ 301 and 302 because DBSP has offices in New York and regularly transacts business in the state. Additionally, the Trust was formed under New York law pursuant to the PSA, which contains a New York choice of law provision.

20. Venue in this Court is proper pursuant to CPLR § 503(a) and (c) because the Trustee's principal executive office is in New York County and because DBSP is a foreign corporation authorized to transact business in New York with its principal New York offices in New York County.

FACTUAL ALLEGATIONS

I. The Securitization

21. A mortgage loan securitization is a structured finance transaction whereby mortgage loans are pooled and deposited into an entity (typically, a trust) and serve as collateral for the issuance of securities by that entity. The securities pay principal and interest from the cash flow generated by the mortgage loan pool.

22. The most common form of residential mortgage loan securitization involves the creation of a trust, which purchases a portfolio of mortgage loans from originators of the mortgage loans, or sponsors of the securitization, and issues certificates representing interests in the assets of the trust. The trust and trustee hold the mortgage loans, as well as all of the rights associated with those loans, for the benefit of the certificateholders. The value of the mortgage loans (*i.e.*, the price that the trust paid for those loans) is directly contingent on the quality of the mortgage loans and the originator's or, as here, the sponsor's agreed-upon obligation to cure or repurchase any defective loans.

23. The Securitization was effectuated through this process. DBSP served as the sponsor for the Securitization. As noted, DBSP purchased the Mortgage Loans either directly from the Originators or through their affiliates. DBSP then entered into the Purchase Agreement, pursuant to which DBSP sold its Mortgage Loans to ACE. In the Purchase Agreement, DBSP agreed that the fact that ACE or any assignee, transferee or designee of ACE (collectively, the "Successors"), including the Trustee, had or had not conducted any examination of loan files or other documents relating to the Mortgage Loans would not impair ACE's (or any of the Successors', including the Trustee's) rights to demand repurchase or other relief or remedy provided for in the Purchase Agreements. (*See* Exhibit A, Purchase Agreement §§ 4(e), 7(a))

24. Pursuant to the PSA, ACE created the Trust, deposited the Mortgage Loans into the Trust, and executed the sale of the Certificates for which the Mortgage Loans serve as collateral. In the PSA, ACE agreed to transfer and assign to the Trustee, for the benefit of the Certificateholders, all the rights, title and interests of ACE in and to the Mortgage Loans and the rights of ACE under the Purchase Agreement. (*See* Exhibit A, PSA § 2.01)

25. Thus, the Trust and Trustee hold the Mortgage Loans on behalf of and for the benefit of the Certificateholders and stand in the shoes of ACE with respect to the enforcement of DBSP's obligations under the Purchase Agreement and the PSA, including the cure and repurchase obligations associated with breaches of the Representations and Warranties.

II. DBSP's Contractual Obligations

A. DBSP's Representations and Warranties In Connection With The Sale of The Loans

26. In order to execute the sale of the Mortgage Loans in a commercially-efficient manner – *i.e.*, to relieve investors of the burden of verifying the quality of every single Mortgage Loan in the pool – DBSP guaranteed the quality of each Mortgage Loan in the Trust. DBSP's

guarantee consisted of two components: (1) DBSP made specific representations and warranties regarding the quality of each Mortgage Loan, and (2) DBSP agreed to cure any breach of the Representations and Warranties or repurchase any Defective Loan. DBSP had direct access to the detailed information contained in each Mortgage Loan file and possessed unique knowledge regarding the Mortgage Loans. In contrast, investors in the Certificates did not have access to the underlying Mortgage Loan files when the Certificates were issued.

27. DBSP's guarantee provided investors in the Certificates with comfort and assurance that the Mortgage Loans were of a certain quality. Consequently, the Certificates derived their value from the veracity of the Representations and Warranties and DBSP's agreed-upon obligations to cure or repurchase. Thus, the Representations and Warranties, as well as DBSP's cure and repurchase obligations, were, and continue to be, critical components of the Securitization.

28. DBSP's Representations and Warranties are set forth fully in Section 6 of the Purchase Agreement, and include, among many other Representations and Warranties, the following:

- "No misrepresentation or fraud has taken place on the part of the Sponsor, the Mortgagor or any third party originator of such Mortgage Loan, or to the Sponsor's knowledge, any other person, including without limitation, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan or in the application of any insurance in relation to such Mortgage Loan" (Exhibit A, Purchase Agreement § 6(ii))

- "Information provided to the Rating Agencies, including the loan level detail, is true and correct according to the Rating Agency requirements" (*Id.* § 6(i))

- "The Mortgage Loans were underwritten in accordance with the related originator's underwriting guidelines in effect at the time the Mortgage Loans were originated (the "Applicable Underwriting Guidelines") except with respect to certain of those Mortgage Loans which had compensating factors permitting a deviation from the Applicable Underwriting Guidelines" (*Id.* § 6(xxiii))

- "The Mortgage File contains an appraisal of the related Mortgaged Property which was made prior to the approval of the Mortgage Loan by a qualified appraiser, duly appointed by the related originator and was made in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Uniform Standards of Professional Appraisal Practice" (*Id.* § 6(xxx))

29. Without the Representations and Warranties, the Mortgage Loans would not have been securitized at all or would have been securitized on materially different economic terms.

30. Reflecting the significance of the Representations and Warranties, DBSP accepted the risk that if any of the Representations and Warranties were breached, and DBSP could not cure the breach within the Cure Period, DBSP – not the Trust or the Certificateholders – would solely bear the consequences of the breach through repurchase of the Defective Loans. In addition, DBSP explicitly agreed to promptly notify ACE, the Trustee or any of the Successors if it discovered that any of the Mortgage Loans in the Trust breached any of the Representations and Warranties. (*See* Exhibit A, Purchase Agreement § 7(a))

B. The Remedies For Breaches Of DBSP's Representations And Warranties

31. Specifically, DBSP agreed that within 60 days of its discovery or receipt of notice of any breach of a Representation and Warranty that materially and adversely affects the value of a Mortgage Loan or the interest therein of the Certificateholders, DBSP would cure such breach or, in the event DBSP could not cure such breach within the 60 days, within 90 days of its discovery or receipt of notice of any such breach, DBSP would repurchase the affected Mortgage Loan at the Purchase Price (as such term is defined in the PSA). (*See* Exhibit A, Purchase Agreement § 7(a); PSA § 2.03; *see also* PSA § 1.01 ("Purchase Price"))

32. Section 7(a) anticipates that some breaches of the Representations and Warranties could not be cured within the Cure Period because, among other reasons, the breach is incurable. (*See* Exhibit A, Purchase Agreement § 7(a)) Incurable breaches include the breaches discussed

herein: overstated borrower income; understated existing debt obligations; debt-to-income ratios; loan-to-value ratios and/or combined loan-to-value ratios exceeding permissible maximums; overstated property values; and misstatements of occupancy status. (*See infra* ¶ 29) In other words, incurable breaches include, among other things, any misrepresentations made at the time the Securitization closed, which materially and adversely affected the value of the Mortgage Loan at the time they were purchased by the Trust. For the Mortgage Loans suffering from these incurable breaches, DBSP agreed and obligated itself to repurchase such Mortgage Loans, and to reimburse the Trustee for all reasonable expenses related to the enforcement of the repurchase and cure obligations. (*See* Exhibit A, Purchase Agreement § 7(a); PSA § 2.03; *see also* PSA § 1.01 ("Purchase Price"))

III. Evidence of DBSP's Breaches

33. The Forensic Review Firm has discovered pervasive breaches of the Representations and Warranties. Of the 697 Mortgage Loan files inspected, the Forensic Review Firm uncovered breaches with respect to fully 696 Defective Loans. Furthermore, an analysis of publicly-available data about the Mortgage Loans uncovered breaches of the Representations and Warranties with respect to 946 Mortgage Loans. In total, 1,642 repurchase demands have been submitted to DBSP thus far.

34. The pervasive breaches of the Representations and Warranties include, among many others, the following:

A. *Overstatement of Borrower Income*: A borrower's ability to repay a loan is directly correlated to the borrower's income – *i.e.,* the lower the borrower's income in relation to a given loan balance, the lesser the borrower's ability to repay that loan. In addition, lower income means that a borrower is less likely to save money for adverse economic conditions. Overstated borrower income demonstrates that the borrower

misrepresented his/her income and that the Originator never verified or confirmed whether the borrower had sufficient financial means to repay the Mortgage Loan, which reduces the actual value of the Mortgage Loan on the day that it was purchased by the Trust.

B. Overstated borrower income also renders inaccurate the borrower's debt-to-income ratio ("DTI") (as discussed in detail below). In many cases, the borrower's actual DTI levels were materially in excess of the Originators' standards and underwriting guidelines because the borrower's income was overstated at the time of origination. If investors in the Trust had known that borrowers' income was materially overstated, it is logical to assume that the purchase and the securitization of the Mortgage Loans would have been rejected or negotiated on fundamentally different economic terms. Given the above-described considerations, overstatement of borrower income materially and adversely affected the value of the affected Mortgage Loans. The following are examples of breaches related to overstated borrower income:

- On one loan application, the borrower listed a monthly income of $8,500 from self-employment as a computer consultant. The co-borrower listed a monthly income of $7,800 from self-employment as an auto detailer. However, the origination credit reports did not identify either borrower as self-employed. Both borrowers ultimately filed for bankruptcy, the petition for which indicates the combined monthly income at the time of origination was actually $6,360.58, as opposed to the $16,300 listed on the application. The application thus overstated the monthly income by $9,939.42.

- On another application, the borrower listed a monthly income of $6,901 from employment as a "supervisor." However, the Forensic Review Firm contacted the Borrower's employer at the time of origination, who verified that the Borrower was actually a housekeeper, not a "supervisor," and the actual monthly income at the time of origination was only $1,000.

C. *Understatement of Existing Debt Obligations*: A clear understanding and review of a borrower's existing debt obligations is another key component of loan

underwriting. Like overstatement of borrower income, understatement of a borrower's existing debt obligations at origination makes it less likely that the borrower will be able to repay the loan. Also like overstatement of income, understated borrower debt obligations demonstrate that the borrower misrepresented his or her debt obligations and that the Originators never verified or confirmed whether the borrower had sufficient financial means to repay the Mortgage Loan, which reduces the actual value of the Mortgage Loan on the day that it was purchased by the Trust.

D. In addition, the higher the existing debt obligations of a borrower, the higher the borrower's DTI. In many cases, as a result of understated existing debt obligations, the borrower DTI levels were materially in excess of the Originators' standards and underwriting guidelines. If investors in the Trust had known that borrowers of the Mortgage Loans were encumbered by additional and significant debt obligations, it is logical to assume that the purchase and the securitization of the Mortgage Loans would have been rejected or negotiated on fundamentally different economic terms. Given the above-described considerations, understatement of borrower debt obligations materially and adversely affected the value of the affected Mortgage Loans. The following are examples of breaches related to understated existing debt obligations:

- On one loan application, the borrowers failed to disclose all of the properties they owned at the time of origination. Just two months prior to closing on the subject loan, the borrowers also purchased a property with liens totaling $835,000 and a monthly payment of $4,613.84. The borrowers' ownership of that recently-purchased property and the associated debt was not reflected on the loan application at the time the subject loan closed.

- On another application, a borrower failed to disclose the purchase of property two months prior to origination, with liens totaling $620,000 and

a monthly payment of $4,182. Further, within days of closing on the subject loan, the same borrower closed on yet another property, with liens totaling $785,000 and a monthly payment of $6,153. The borrower obviously started purchase proceedings on the aforementioned loans concurrently with the subject loan.

E. *Debt-to-Income Ratio*: The DTI, or the borrower's monthly debt obligations as compared to his or her monthly income, is a key measure of a borrower's expected ability to repay a loan. The higher the DTI (*i.e.*, the greater the percentage of monthly income a borrower must devote to debt payments), the greater the risk that the borrower will be unable to pay its loan. Conversely, a lower DTI means that the borrower is more able to weather adverse economic situations. The DTI is such a sensitive metric of the borrower's creditworthiness that a mere 2-3 percentage point change may require re-evaluation of loan approval. The Originators set maximum DTI levels in their underwriting guidelines. However, in many cases, the borrower's DTI levels were materially in excess of these maximums. If investors in the Trust had known that the DTI of the borrowers violated the Originators' underwriting guidelines, it is logical to assume that the purchase and the securitization of the Mortgage Loans would have been rejected or negotiated on fundamentally different economic terms. Given the above-described considerations, misrepresentations of the DTI materially and adversely affected the value of the affected Mortgage Loans. The following are examples of breaches related to DTI:

- One borrower was approved on a stated monthly income of $13,300 from self-employment. The borrower's tax returns from the time of origination, however, indicate a monthly income of only $2,336.75. As a result, the DTI for the subject loan increased to 185.73%, far in excess of the underwriting guideline maximum of 44% for stated-income loans.

- On another application, the borrowers, a site engineer supervisor and a certified nursing assistant, stated a combined monthly income of $18,267. Tax documentation, however, indicates that the borrowers' monthly

income at the time of origination was only $3,859.17. At their true income level, the borrowers' DTI was 187.48%.

F. *Loan-to-Value or Combined Loan-to-Value Ratios:* A loan-to-value ratio ("LTV") is a measure of the loan balance compared to the value of the mortgaged property. LTV is useful in assessing prepayment and credit risk of mortgage loans, and the likely severity of loss in the event of foreclosure. LTV may also serve as an indicator of how easily a borrower may be able to refinance or purchase a new home, thus prepaying the outstanding mortgage loan. A combined loan-to-value ratio ("CLTV") is a similar measure of credit risk, but combines the total amount of the borrower's mortgage debt obligations (as when a borrower has both a first and second mortgage on a property) compared to the value of the mortgaged property. The lower the LTV or CLTV, the lower the severity of losses on defaulted loans because loans with a lower LTV or CLTV provide a greater equity "cushion," thereby increasing the likelihood that the proceeds from a foreclosure will cover the unpaid balance of the mortgage loan. Further, the lower the LTV or CLTV, the lower the likelihood that a borrower will "strategically default" when there is a decline in the mortgaged property's value, as the borrower has more equity in the home to protect.

G. Reflecting the importance of a borrower's LTV or CLTV, the Originators' standards and underwriting guidelines provided for maximum LTV and CLTV levels. However, in many cases, the borrowers' actual CLTV levels (this Securitization includes only second lien Mortgage Loans, and therefore CLTV is the relevant measure) were materially in excess of the Originators' standards and underwriting guidelines because, among other reasons, the mortgaged property's value was materially overstated. Based in part on an industry-accepted Automated Valuation Model ("AVM") – which is used to,

among other things, confirm the reported appraised value of mortgage properties – it was discovered that the appraised value of over 194 properties was at least 10 percent greater than the true market value of the mortgaged property. Overstated property values demonstrate that appraisers did not act independently and that the appraisals were subject to bias. If investors in the Trust had known that the property values had been materially overstated it is logical to assume that the purchase and the securitization of the Mortgage Loans would have been rejected or negotiated on fundamentally different economic terms. Given the above-described considerations, overstatement of property values and the subsequent miscalculation of the borrowers' CLTV materially and adversely affected the value of the affected Mortgage Loans. The following are examples of breaches related to CLTV:

- The appraiser valued the subject property at $920,000, basing that calculation in part on four properties in excess of 0.40 miles and up to 0.95 miles from the subject property. The AVM analysis of the subject property, however, utilizing properties located much closer, calculates the actual property value to be $515,000, resulting in a CLTV of 178.64%.

- The appraiser valued the subject property at $775,000, even though it had been sold just ten months prior for $565,000. The appraiser's report does not justify the increased property value of 37% in a mere ten months, nor was it questioned by the underwriter. The AVM analysis of the subject property fixes its true value at $443,000, resulting in a CLTV of 175%.

H. *Occupancy Status*: The occupancy type of a mortgaged property indicates how the borrower will use the property. There are generally three types: owner-occupied, second home and non-owner-occupied properties (which include investment properties). A borrower is more likely to make payments on a mortgage loan for a property the borrower occupies as his or her primary residence (*i.e.*, owner-occupied). Thus, mortgage loans for owner-occupied properties are less likely to experience payment delinquencies and/or payment defaults than second home and non-owner-

occupied properties. Occupancy type is therefore critical to analyzing the credit risk profile of a loan when determining its value, and thus, is a significant consideration by rating agencies in assessing and assigning a credit rating to the securitization. Moreover, the Originators' underwriting guidelines require that the mortgaged properties be owner-occupied.

I. In many cases, borrowers misrepresented that they occupied or intended to occupy the subject mortgaged property as their primary residence. Moreover, it is evident that the Originators never verified or confirmed the borrower's misrepresented occupancy status because many of the subject mortgaged properties were, in truth, second homes or investment properties. If investors in the Trust had known that the properties underlying many of the Mortgage Loans were not used as primary residences and merely served as second homes or investment properties, it is logical to assume that the purchase and the securitization of the Mortgage Loans would have been rejected or negotiated on fundamentally different economic terms. Given the above-described considerations, misrepresentations of occupancy status materially and adversely affected the value of the affected Mortgage Loans. The following are examples of breaches related to occupancy status:

- The subject loan closed as an owner-occupied property, however, the borrower continued to live at the address listed on the loan application for seven years following the loan closing. In addition, in his subsequent bankruptcy petition, the borrower listed the subject property as a source of rental income.

- The subject loan closed as an owner-occupied property, however, the borrower continued to live at the address listed on the loan application for six years following the loan closing. Additionally, the property tax bill for the subject property was sent to a different address, and a review of the borrower's credit file did not reflect the borrower ever listing the subject property as a residence.

35. Each category of Defective Loan discussed above breached DBSP's Representations and Warranties because the borrower's (i) income was overstated; (ii) existing debt obligations were understated; (iii) DTI or CLTV exceeded the permissible maximums set by the Originators' underwriting guidelines; (iv) the appraisals overstated the value of the mortgaged property; and/or (iv) occupancy status was false. Accordingly, such Defective Loans breached the Representations and Warranties regarding "no misrepresentation or fraud" at the time of origination (Exhibit A, Purchase Agreement § 6(ii)), compliance with the Originators' underwriting guidelines (*id.*, § 6(xxiii)), independent appraisal (*id.*, § 6(xxx)) and providing true and correct information to rating agencies (*id.*, § 6(i)) (as rating agencies consider, among other things, the borrower's DTI, CLTV, occupancy type and property values in assigning a credit rating to different tranches of the securitization). Moreover, these breaches (as with all breaches identified in the Breach Notices (defined below)) materially and adversely affected the value of the Defective Loans because, among other things, they overstated the Defective Loans' quality and value as of the date the Defective Loans were purchased by the Trust. Had investors in the Trust known the true quality and value of the Defective Loans – including correct (non-inflated) borrower income, actual (not understated) existing debt, true (not manipulated) DTI, CLTV, independent (not biased) appraisals of the mortgaged properties and verified (not false) occupancy status − as well as the fact that the Originators failed to follow their underwriting guidelines in originating the Mortgage Loans, it is logical to assume that the Securitization would have been outright rejected or negotiated on fundamentally different economic terms.

IV. The Public Record Contains Further Evidence That Breaches Of The Representations and Warranties Pervade The Trust

A. Deutsche Bank Disregarded Its Own Underwriting Standards And Profited From The Failure Of RMBS Trusts

36. Recent government investigations have revealed that Deutsche Bank, via its wholly-owned subsidiaries DBSP and ACE, disregarded underwriting guidelines, and as a result made representations and warranties for mortgages that did not meet stated criteria in the governing documents.

37. These details regarding Deutsche Bank can be found in the report issued in April 2011 by the Senate Permanent Subcommittee on Investigations (the "Levin Report"), available at http://www.hsgac.senate.gov//imo/media/doc/Financial_Crisis/FinancialCrisisReport.pdf. According to the Levin Report, starting as early as 2005, Deutsche Bank began internally disparaging the quality of the loans it was securitizing.

38. Greg Lippmann was global head of one of Deutsche Bank's Trading Desks for structured financial products. Those desks were responsible for trading a variety of RMBS and other asset backed securities on the secondary market. According to the Levin Report, throughout 2006 and early 2007, Lippmann routinely disparaged ACE (the special purpose vehicle that acted as the depositor for this Securitization and many others like it) in emails as a disreputable company, even though it was controlled by Deutsche Bank.

39. Further, because Deutsche Bank generally outsourced its due diligence to Clayton Holdings Inc. ("Clayton"), a third party due diligence firm, it had the benefit of an independent view of the loans it was originating and securitizing into RMBS trusts. Nevertheless, as Clayton disclosed to the FCIC, Deutsche Bank still securitized almost half of the loans Clayton rejected for failing to comply with underwriting guidelines. FIN. CRISIS INQUIRY COMM'N, PUBLIC LAW 111-21, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION

ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES (2011), *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.

B. The Originators Of The Mortgage Loans Ignored Their Own Underwriting Standards

40. As noted above, over 90 percent of the Mortgage Loans in the Trust were originated by two Originators: Long Beach and Fremont. DBSP represented that the Mortgage Loans included in the Trust complied with these Originators' underwriting guidelines.

41. In November 2008, the Office of the Comptroller of the Currency, an office within the United States Department of the Treasury, issued a report identifying the "Worst Ten" mortgage originators in the "Worst Ten" metropolitan areas. The worst originators were defined as those with the largest number of non-prime mortgage foreclosures for 2005- 2007 originations. Long Beach and Fremont were both on that list. In fact, Long Beach was identified as the second-worst subprime lender in the country, and Fremont the fifth-worst, based on the delinquency rates of the mortgages they originated in the ten metropolitan areas between 2005 and 2007 with the highest rates of delinquency. *See* "Worst Ten in the Worst Ten," Office of the Comptroller of the Currency Press Release (Nov. 13, 2008), available at http://www.occ.gov/news-issuances/news-releases/2009/nr-occ-2009-112b.pdf.

42. Fremont's originating practices were so poor, they were separately sued by both Morgan Stanley and Lehman Brothers for breach of contract arising out of Fremont's failure to repurchase loans that Fremont sold between 2004 and 2006. *See Morgan Stanley Mortg. Capital Holdings LLC, as Successor-in-Interest to Morgan Stanley Mortg. Capital Inc. v. Fremont Inv. & Loan*, No. 07 Civ. 9457 (S.D.N.Y.) ; *see also Aurora Loan Services LLC, et al. v. Fremont Inv. & Loan Corp.*, No. 07 Civ. 1284 (D. Colo.). On March 7, 2007, following an extensive investigation, the Federal Deposit Insurance Corporation issued a Cease & Desist Order to

Fremont, concluding that Fremont was, in fact, "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]," "operating with a large volume of poor quality loans," and "engaging in unsatisfactory lending practices." March 7, 2007 Order to Cease & Desist, at 2-3.

V. DBSP'S Refusal To Comply With Its Express Contractual Obligations

43. Upon learning the results of the Forensic Review Firm's investigation, the Trustee promptly sent notice of the breaches to DBSP (collectively, the "Breach Notices"), demanding that DBSP cure the breaches or repurchase the Defective Loans.[1] Each of the Breach Notices enumerated the Defective Loans, detailed the specific breaches for each of the Defective Loans and provided supporting documentation for each of the breaches.

44. To date, DBSP has failed to repurchase a single Defective Loan, and has refused to recognize the Breach Notices as sufficient to trigger their cure or repurchase obligations. Given DBSP's categorical refusal to abide by its repurchase obligations or even recognize the validity of the Breach Notices, it is reasonable to conclude that DBSP will not voluntarily comply with its express obligations to repurchase any Defective Loans in the Trust, including those identified in the Breach Notices.

45. To date, the Trust has suffered over $330 million of losses on non-performing Mortgage Loans.

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[1] The Breach Notices were sent on February 8, 2012, March 23, 2012, April 23, 2012, April 30, 2012, May 11, 2012, May 16, 2012, May 16, 2012, May 31, 2012, June 7, 2012 and July 19, 2012.

CAUSE OF ACTION
(Breach of Contract / Specific Performance)

46. The Trustee repeats all the foregoing allegations as though fully set forth herein.

47. The PSA and Purchase Agreement are valid contracts.

48. The Trustee is an express party to the PSA and has performed all conditions, covenants and promises necessary under the PSA and/or the Purchase Agreement for the commencement of this action.

49. Under Section 2.03(a) of the PSA and Section 7 of the Purchase Agreement, DBSP must repurchase or cure any Mortgage Loans that violate the Representations and Warranties.

50. The Trustee provided DBSP with prompt notice of the Defective Loans in the Trust that were in breach of the Representations and Warranties.

51. DBSP has failed to repurchase or cure any of the Defective Loans in violation of Section 2.03(a) of the PSA and Section 7 of the Purchase Agreement.

52. Accordingly, DBSP should be compelled to comply with its contractual obligation to repurchase all Defective Loans in the Trust. In the alternative, the Trustee, on behalf of the Trust, should be awarded damages in an amount to be determined at trial.

53. The Trustee also seeks a declaration that DBSP is required to repurchase or otherwise cure breaches of Mortgage Loans upon its "discovery" of such breaches and that formal notice is not required from Trustee.

PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully requests that the Court enter judgment granting the following relief:

1. Specific performance of DBSP's obligation to repurchase all Defective Loans in the Trust based on breaches of its Representations and Warranties in the Purchase Agreement and enforcement of Section 2.03(a) of the PSA and Section 7 of the Purchase Agreement;

2. In the alternative, an award of damages in an amount to be determined at trial;

3. A declaration that DBSP's obligation to repurchase or otherwise cure Defective Loans is triggered upon its discovery of breaches and that formal notice from the Trustee is not required;

4. Reimbursement of costs and expenses of maintaining this action incurred by the Trustee, on behalf of the Trust, as provided for in Section 1.01 of the PSA;

5. Prejudgment interest at the maximum legal rate; and

6. An award of such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all of the claims asserted in the Complaint that are triable to a jury.

DATED: New York, New York
June 18, 2014

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